

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHRISTINA RENA CRAWFORD

Plaintiff,

v.

CAROLYN W. COLVIN, Acting

Commissioner of Social Security,

Defendant.

No. 1:14-cv-03126-SAB

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT;
DENYING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are Plaintiff's Motion for Summary Judgment, ECF No. 15, and Defendant's Motion for Summary Judgment, ECF No. 17. The motions were heard without oral argument. Plaintiff is represented by D. James Tree. Defendant is represented by Assistant United States Attorney Pamela De Rusha and Special Assistant United States Attorney Leisa A. Wolf.

I. Jurisdiction

On December 3, 2010, Plaintiff filed a Title XVI application for supplemental security income (SSI). Plaintiff alleged she is disabled beginning June 18, 2010, due to developmental disability and depression.

Her application was denied initially on June 13, 2011, and again denied on reconsideration on December 14, 2011. A timely request for a hearing was made.

On February 23, 2013, Plaintiff appeared at a hearing in Yakima, Washington

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 1**

1 before Administrative Law Judge (ALJ) Stephanie Martz, who presided over the
2 hearing by video from Seattle. Vocational expert Mark A. Harrington also
3 appeared at the hearing. Plaintiff was represented by attorney D. James Tree.

4 The ALJ issued a decision on March 19, 2013, finding that Plaintiff was not
5 disabled. Plaintiff timely requested review by the Appeals Council, which denied
6 her request for review on July 3, 2014. The Appeals Council's denial of review
7 makes the ALJ's decision the final decision of the Commissioner. 42 U.S.C.
8 §405(h).

9 Plaintiff filed a timely appeal with the U.S. District Court for the Eastern
10 District of Washington on September 3, 2014. The instant matter is before this
11 Court pursuant to 42 U.S.C. § 405(g).

12 **II. Sequential Evaluation Process**

13 The Social Security Act defines disability as the "inability to engage in any
14 substantial gainful activity by reason of any medically determinable physical or
15 mental impairment which can be expected to result in death or which has lasted or
16 can be expected to last for a continuous period of not less than twelve months."

17 42 U.S.C. § 423(d)(1)(A). A claimant shall be determined to be under a disability
18 only if her impairments are of such severity that the claimant is not only unable to
19 do her previous work, but cannot, considering claimant's age, education and work
20 experiences, engage in any other substantial gainful work which exists in the
21 national economy. 42 U.S.C. §423(d)(2)(A).

22 The Commissioner has established a five-step sequential evaluation process
23 for determining whether a person is disabled. 20 C.F.R. § 416.920(a)(4); *Bowen v.*
24 *Yuckert*, 482 U.S. 137, 140-42 (1987).

25 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R. §
26 416.920(b). Substantial gainful activity is work done for pay and requires
27 compensation above the statutory minimum. 20 C.F.R. § 416.972(a); *Keyes v.*
28 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in

1 substantial activity, benefits are denied. 20 C.F.R. § 416.971. If she is not, the ALJ
2 proceeds to step two.

3 Step 2: Does the claimant have a medically-severe impairment or
4 combination of impairments? 20 C.F.R. § 416.920(c). If the claimant does not
5 have a severe impairment or combination of impairments, the disability claim is
6 denied. A severe impairment is one that lasted or must be expected to last for at
7 least 12 months and must be proven through objective medical evidence. 20
8 C.F.R. § 416.909. If the impairment is severe, the evaluation proceeds to the third
9 step.

10 Step 3: Does the claimant's impairment meet or equal one of the listed
11 impairments acknowledged by the Commissioner to be so severe as to preclude
12 substantial gainful activity? 20 C.F.R. § 416.920(d); 20 C.F.R. § 404 Subpt. P.
13 App. 1. If the impairment meets or equals one of the listed impairments, the
14 claimant is conclusively presumed to be disabled. *Id.* If the impairment is not one
15 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.

16 Before considering Step 4, the ALJ must first determine the claimant's
17 residual functional capacity. 20 C.F.R. § 416.920(e). An individual's residual
18 functional capacity is her ability to do physical and mental work activities on a
19 sustained basis despite limitations from her impairments.

20 Step 4: Does the impairment prevent the claimant from performing work she
21 has performed in the past? 20 C.F.R. § 416.920(f). If the claimant is able to
22 perform her previous work, she is not disabled. *Id.* If the claimant cannot perform
23 this work, the evaluation proceeds to the fifth and final step.

24 Step 5: Is the claimant able to perform other work in the national economy
25 in view of her age, education, and work experience? 20 C.F.R. § 416.920(g).
26 The initial burden of proof rests upon the claimant to establish a prima facie case
27 of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098 (9th Cir.
28 1999). This burden is met once a claimant establishes that a physical or mental

1 impairment prevents her from engaging in her previous occupation. *Id.* At step
2 five, the burden shifts to the Commissioner to show that the claimant can perform
3 other substantial gainful activity. *Id.*

4 **III. Standard of Review**

5 The Commissioner's determination will be set aside only when the ALJ's
6 findings are based on legal error or are not supported by substantial evidence in
7 the record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)
8 (citing 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
9 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."
10 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975). Substantial
11 evidence is "such relevant evidence as a reasonable mind might accept as adequate
12 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the
13 ALJ's denial of benefits if the evidence is susceptible to more than one rational
14 interpretation, one of which supports the decision of the administrative law judge.
15 *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). "If the evidence can
16 support either outcome, the court may not substitute its judgment for that of the
17 ALJ." *Matney*, 981 F.2d at 1019.

18 A decision supported by substantial evidence will be set aside if the proper
19 legal standards were not applied in weighing the evidence and making the
20 decision. *Browner v. Secretary of Health & Human Servs.*, 839 F.2d 432, 433 (9th
21 Cir. 1988). An ALJ is allowed "inconsequential" errors as long as they are
22 immaterial to the ultimate nondisability determination." *Stout v. Comm'r, Soc. Sec.*
23 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

24 **IV. Statement of Facts**

25 At the time of the hearing, Plaintiff was 35 years old. She did not graduate
26 from high school, dropping out after the ninth grade and has not obtained her
27 GED. When in school, she attended mostly special education classes. Plaintiff has
28

1 four children, who at times have been placed in foster care. Plaintiff's IQ is below
2 70 and she also suffers from depression.

3 She has prior employment that she obtained through People For People or
4 Opportunities Industrialization Center (OIC), including work as an activities
5 assistant at Blossom House, an assisted living home for seniors. She also worked
6 part-time as a janitor in a bar for a short time.

7 **V. The ALJ's findings**

8 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
9 activity since December 3, 2010, the application date. (Tr. 21.)

10 At step two, the ALJ found Plaintiff has the following severe impairments:
11 depression, cognitive disorder, and amphetamine dependence in remission. (Tr.
12 21.)

13 At step three, the ALJ found that Plaintiff's impairments or combination of
14 impairments do not meet or medically equal Listings 12.02 (Organic Mental
15 Disorders); 12.04 (Affective Disorders); 12.05 (Intellectual Disability) and 12.09
16 (Substance Addiction Disorders). (Tr. 24.)

17 The ALJ concluded that Plaintiff has the residual functional capacity to
18 perform a full range of work at all exertional levels but with the following non-
19 exertional limitations: She can understand, remember and carry out simple, routine
20 tasks for two hour periods throughout the workday with normal breaks. She can
21 have incidental brief contact with the general public but should not engage in
22 work tasks that require her to have contacts with any significance with regard to
23 completion of her actual job tasks. (Tr. 27.)

24 At step four, the ALJ found Plaintiff was not capable of performing any past
25 relevant work. (Tr. 31.)

26 At step five, the ALJ found there were jobs that exist in significant numbers
27 in the national economy that Plaintiff can perform. (Tr. 31.) The ALJ relied on the
28 testimony of the vocation expert and concluded that Plaintiff would be able to

1 perform the requirements of representative occupations such as housekeeper,
 2 folder of shirts, and street cleaner. As a result, the ALJ concluded that Plaintiff has
 3 not been under a disability, as defined in the Social Security Act, since December
 4 3, 2010.

5 **VI. Issues for Review**

- 6 1. Whether Plaintiff meets the requirements of Listing 12.05C?
- 7 2. Whether the ALJ's credibility determination is supported by substantial
 8 evidence?

9 **VII. Analysis**

10 **1. Step 3 Analysis - Listing 12.05C**

11 Step 3 of the sequential evaluation process requires the ALJ to determine
 12 whether plaintiff's impairment meets or equals any of the listed impairments
 13 described in the regulations. 20 C.F.R. §§ 404.1520(d), 416.920(d). A claimant is
 14 presumptively disabled and entitled to benefits if she meets or equals a listed
 15 impairment. To meet a listed impairment, a disability claimant must establish that
 16 her condition satisfies each element of the listed impairment in question. *See*
 17 *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990); *Tackett v. Apfel*, 180 F.3d 1094,
 18 1099 (9th Cir.1999). To equal a listed impairment, a claimant must establish
 19 symptoms, signs, and laboratory findings at least equal in severity and duration to
 20 each element of the most similar listed impairment. *Tackett*, 180 F.3d at 1099-
 21 1100 (quoting 20 C.F.R. § 404.1526).

22 "The structure of the listing for mental retardation (12.05) is different from
 23 that of the other mental disorders listings. Listing 12.05 contains an introductory
 24 paragraph with the diagnostic description for mental retardation. It also contains
 25 four sets of criteria (paragraphs A through D). If [a claimant's] impairment
 26 satisfies the diagnostic description in the introductory paragraph and any one of
 27 the four sets of criteria, we will find that [the claimant's] impairment meets the
 28 listing." 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.00A.

Section 1205 provides:

Mental retardation refers to significant subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the development period: *i.e.* the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements of A, B, C, or D are satisfied.

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function.

D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

A formal diagnosis of mental retardation is not required to meet Listing 12.05C. *Maresh v. Barnhart*, 438 F.3d 897, 899 (8th Cir. 2006); *see also Pedro v. Astrue*, 849 F.Supp.2d 1006, 1010 (D. Or. 2011) (noting that although the Ninth Circuit has yet to rule on this issue, several district courts within the Ninth Circuit have so concluded). “A claimant may use circumstantial evidence to demonstrate adaptive functioning deficits, such as ‘attendance in special education classes, dropping out of high school prior to graduation, difficulties in reading, writing or math, and low skilled work history.’” *Id.* at 1012 (citing *Campbell v. Astrue*, 2011 WL 444783, *17 (E.D. Cal. Feb. 8, 2011); *Gomez v. Astrue*, 695 F.Supp.2d 1048, 1058–59 (C.D. Calif. 2010)).

Under Paragraph C, an impairment imposes a “significant work-related

1 limitation of function” when “its effect on a claimant’s ability to perform basic
2 work activities is more than slight or minimal.” *Fanning*, 827 F.2d at 633. This is
3 essentially the same standard used to determine if an impairment is severe at step
4 two. *See Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir.1996).

5 The ALJ concluded that Plaintiff did not meet the listing of 12.05(D), but
6 did not expressly analyze whether she met the listing of 12.05(C), although the
7 ALJ ultimately concluded that “even if the claimant had a severe mentally
8 determinable impairment in this area, she would not meet the listing because she
9 does not have deficits in adaptive functioning manifesting before the age of
10 twenty-two.” (Tr. 27.)

11 Plaintiff argues the ALJ erred in finding that she failed to demonstrate that
12 she had deficits in adaptive functioning before the age of twenty-two because she
13 submitted a Special Education Assessment Summary from October 11, 1998,
14 when Plaintiff was 10 years old. Under the heading “ADAPTIVE BEHAVIOR,”
15 the results of the Vineland Adaptive Behavior Scales demonstrated that she was
16 functioning at a 5-6 Age Equivalent.

17 The Court agrees. The record clearly demonstrates that Plaintiff met her
18 burden of showing her adaptive functioning deficits existed prior to the age of 22.
19 Circumstantial evidence exists in the record to support adaptive functioning
20 deficits prior to the age of 22: Plaintiff attended special education classes
21 throughout her schooling; her academic skills in reading, spelling and math are
22 significantly below the 9th grade level, with particularly deficient math skills; she
23 did not graduate from high school; does not have her GED; and has a poor work
24 history that is generally short term and low skilled. The Special Education
25 Assessment specifically indicates deficits in adaptive functioning. Thus, the ALJ’s
26 finding that there was “no evidence” of deficits in adaptive functioning prior to
27 age 22 is not supported by substantial evidence.

28 Additionally, the record demonstrates that Plaintiff meets the criteria of
**ORDER GRANTING PLAINTIFF’S MOTION FOR SUMMARY
JUDGMENT; DENYING DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT ~ 8**

Paragraph C because the ALJ found that Plaintiff had an additional severe impairment of depression. *Fanning v. Brown* 327 F.3d 631, 633 n.3 (1987) (noting that a step 2 finding of a severe impairment satisfies the 12.05(C) requirement, although also indicating that a specific severity finding is not required to satisfy this standard). Consequently, the ALJ's decision that Plaintiff is not disabled is not supported by substantial evidence. *See id.* at 634 ("If [the claimant] suffers from the impairment listed in section 12.05(C), and the impairment meets the 12 month duration requirement specified by statute, . . . he must be found disabled without consideration of his age, education, and work experience.") 20 C.F.R. § 416.920(d); *see Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987) (Secretary has statutory authority to relieve claimant with listed impairment of burden of proving inability to perform prior work.)) (citations omitted).

Because Plaintiff meets the Listing of 12.05C, the proper remedy is to remand for an immediate award of benefits. The record is fully developed and further proceedings "would serve no useful purpose." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment, ECF No. 15, is **GRANTED**.
2. Defendant's Motion for Summary Judgment, ECF No. 17, is **DENIED**.
3. The decision of the Commissioner is **reversed** and **remanded** for an immediate award of benefits.
4. The District Court Executive is directed to enter judgment in favor of Plaintiff and against Defendant.
5. Application for attorneys fees may be filed by separate motion.

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ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~ 9

1 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
2 file this Order and provide copies to counsel.

3 **DATED** this 8th day of January, 2016.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

9 Stanley A. Bastian
10 United States District Judge